Supreme Court, U.S.
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No. _____

In the

Supreme Court of the United States

OCTOBER TERM, 1989

Helena Marine Service, Inc. and
New York Marine Managers, Inc. ..... *Petitioners*

V.

St. Paul Fire & Marine Insurance
Company and U.S. Fire Insurance
Company ..... *Respondents*

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO WRIT OF CERTIORARI
OF RESPONDENT ST. PAUL FIRE & MARINE
INSURANCE COMPANY

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Eighth Circuit, using sound principles of contract interpretation, correctly construed the insuring provision of a comprehensive general liability insurance policy issued to a financial institution as excluding coverage to a third-party tortfeasor who chartered river barges from the financial institution as part of a financing arrangement.

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STATEMENT OF THE CASE

This case was originally filed by Petitioner Helena Marine Service, Inc. ("Helena") as a diversity action against Respondents. Helena brought suit claiming entitlement to insurance coverage under comprehensive general liability (CGL) insurance policies issued by Respondents to the Union National Bank ("Union"). Helena asserted coverage under a provision of Union's CGL policy which extends coverage to certain other "protected persons" who were not parties to the contract.

After the initial lawsuit was filed, Petitioner New York Marine Managers, Inc. ("NYMM"), one of Helena's insurers, filed a Motion to Intervene seeking partial indemnification from Respondents for money it had paid due to Helena's negligence. Although a jurisdictional issue presented itself, that issue is not before this court.

The trial court, on Petitioner's Motion for Summary Judgment, ruled that Helena was an additional insured or "protected person" under Union's CGL policy and that NYMM was entitled to reimbursement from Respondents as co-insurers of Helena.

Respondents timely filed their appeal to the Eighth Circuit Court of Appeals which reversed the lower court's decision and dismissed all claims against Respondents. A Petition for Rehearing and Request for Suggestion of Hearing En Banc filed by the Petitioners were denied on October 20, 1989. Petitioners next filed their Petition for Writ of Certiorari with the United States Supreme Court invoking jurisdiction under 28 U.S.C. § 1254(1).

REASONS FOR DENYING THE WRIT

This is a case involving the interpretation of a contract. It does not present special or important issues which are of the type and character envisioned by the United States Supreme Court as sufficient to invoke this Court's discretionary jurisdiction.

The rules of the United States Supreme Court provide that "[A] review on Writ of Certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore." Rule 17.1, Supreme Court Rules. Conflicts between the various circuits on a particular issue; conflicts concerning federal questions; and important constitutional, federal jurisdictional or procedural issues are representative examples of reasons cited as worthy of consideration. See Rule 17.1.(a)(b) and (c), Supreme Court Rules.

In support of their Petition for Writ of Certiorari, Petitioners present a common, yet uniquely embellished argument to the United States Supreme Court. Specifically, Petitioners accuse the Eighth Circuit Court of Appeals of violating fundamental principles of insurance and contract law when they arbitrarily and improperly rewrote an insurance contract to the obvious detriment of Petitioners. Petitioners state that, if allowed to stand, the decision would "dangerously erode and undercut" the integrity of insurance contracts. (Pet., p. 5) To the contrary, the Court of Appeals, using fundamental principles of contract interpretation, construed the insuring clause of the contract in a logical and common sense manner. *St. Paul Fire and Marine Ins. Co. v. Helena Marine Service, Inc.*, 884 F.2d 391 (8th Cir. 1989).

The cases cited by Petitioners are not dispositive nor even supportive of their claims. The cases merely recite fundamental principles of contract law, the validity of which is not disputed by Respondents. In essence, Helena Marine

Service, Inc. ("Helena") brought suit asserting insurance coverage under comprehensive general liability (CGL) insurance policies issued by Respondents to the Union National Bank (Union). Helena sought this coverage after a number of river barges broke loose from their moorings on the Arkansas River during a period of high waters and floated downriver causing extensive damage. The barges were owned by Union and chartered to Helena under a bareboat charter agreement. The accident was determined to be the result of Helena's negligence.

The Petitioners, after exhausting their own available insurance, asserted coverage under a provision of Union's CGL policy. Although Petitioners were not parties to the insurance contract they sought coverage under a provision extending coverage to specified other parties. The provision at issue states:

> 5. If you [Union] operate mobile equipment in your business, such as road construction equipment or forklifts, then:
>
> * * *
>
> other persons or organizations are also protected while using mobile equipment registered to you, provided they had your permission . . .

Simply put, this case involved the construction of two words or phrases, "operate" and "mobile equipment", only one of which the Court of Appeals found necessary to construe. [1] The Petitioners argued that Union "operated" the barges in its business enterprise and that covberage should be extended to Helena as the "user" of the barges.

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1 Although Petitioners argued below that the phrase "mobile equipment" included the river barges in question, the Eighth Circuit found it unnecessary to decide this issue.

Petitioners equated the term ownership with operate and by this mechanism claimed coverage under Union's CGL insurance policy. The district court agreed with this argument and found in favor of Petitioners.

On appeal, however, the Eighth Circuit Court of Appeals, using logic and common sense, construed the policy as a whole and reversed the trial court. Citing *Garbincius v. Boston Edison Company*, 621 F.2d 1171, 1177 (1st Cir. 1980) and *El Paso Natural Gas Company v. Western Building Association*, 675 F.2d 1135, 1141 (10th Cir. 1982), the Court of Appeals concluded that merely because the phrase "operate in your business" was not specifically defined in the contract and, may, in some contexts, be ambiguous does not give courts the discretion to give the phrase a meaning which is clearly beyond its intended scope. *St. Paul*, 884 F.2d at 393. As appropriately pointed out by the Court of Appeals, to construe the contract in the manner requested by Petitioners would necessarily result in a bank, or any other business, being deemed to operate any business or vehicle it owns or merely finances if it retains title in the financing arrangement. *Id.* at 394.

Contrary to the assertions of Petitioners, it is Petitioner's interpretation of the contract that would wreak havoc on the fundamental principles of insurance and contract law, not the decision handed down by the Eighth Circuit Court of Appeals.

CONCLUSION

This is a simple case of contract interpretation. It is not one which is of the type and character envisioned by the Supreme Court rules as sufficient to invoke this Court's discretionary jurisdiction.

For the foregoing reasons, Respondent St. Paul Fire & Marine Insurance Company respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, T. Scott Clevenger, hereby certify that I have on this 7th day of February, 1990, served by mail a copy of the foregoing on the following counsel of record.

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